

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**JUN 05 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

TCW SPECIAL CREDITS,

Plaintiff,

v.

FISHING VESSEL CHLOE Z,

Defendant - Appellee,

v.

ROBERT MATOS,

Plaintiff-intervenor,

and

SLOBODIAN PRANJIC,

Plaintiff-intervenor - Appellant.

No. 04-15948

D.C. No. CV-96-00055-JSU

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Guam  
John S. Unpingco, District Judge, Presiding

Argued and Submitted March 17, 2006

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

San Francisco, California

Before: NOONAN and HAWKINS, Circuit Judges, and REED,<sup>\*\*\*</sup> District Judge.

These actions by two injured seamen have already been twice before this court. On the first occasion, we affirmed the *in personam* judgments against the owner of the M/V Chloe Z. It developed that the owner was unable to pay and that its insurer had issued an indemnity policy that would pay only if the owner paid first. The second time before this court we remanded the case for a fact-finding hearing to see if misrepresentations about the insurance had misled the plaintiffs so that their *in rem* claims should not be barred by the three-year statute of limitations. *See* 46 App. U.S.C. § 763a (West 2005); *Usher v. M/V Ocean Wave*, 27 F.3d 370 (9th Cir. 1994) (per curiam). The district court subsequently and correctly found no misrepresentations and no equitable estoppel. The question, however, remains whether the plaintiffs' *in rem* action was barred by the statute of limitations.

The defendant vessel argues, with some plausibility, that implicit in our remand on the issue of equitable estoppel was a holding that, absent such estoppel, the statute of limitations was a bar. As the district court had in the first instance

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<sup>\*\*\*</sup> The Honorable Edward C. Reed, Jr., Senior United States District Judge for the District of Nevada, sitting by designation.

relied on equitable estoppel, it was natural to send the case back on this issue.

Now that the equitable estoppel issue has disappeared, we address, for the first time, whether the *in rem* proceeding was barred by the statute of limitations.

The two plaintiffs filed both their *in personam* actions and their actions *in rem* against the vessel on May 11, 1994. The date was well within the three-year period. The vessel at first did not answer, and a default judgment was entered. But the vessel then appeared in the case and was allowed to respond to the plaintiffs' complaint. It does not lie in the vessel's mouth to assert that the suit was barred when the vessel itself willingly entered the litigation and made no mention of any statute of limitations bar.

Twice, stipulations were signed by counsel on both sides dismissing the vessel. On neither occasion were the stipulations signed or approved by the district court. The stipulations were accordingly without validity. *See* D. Guam Ct. R. GR 3.1 (2006) (formerly codified as D. Guam Ct. R. 126.3 (1996)). The defendant has not challenged this rule.

We did not rule on the timelessness of the *in rem* claims at any earlier stage, although explicitly petitioned by the defendant to do so. The defendant, briefing this case, admitted that the *in rem* claims were alive ("pending") in July 1996, when the *in personam* claims came to trial. They did not merge with the *in*

*personam* judgments of that year and remained pending until ruled upon, as they now are.

The plaintiffs' *in rem* judgments against the proceeds of the sale of the vessel are valid. Accordingly, the judgment of the district court is REVERSED, and the case is REMANDED for proceedings in accordance with this disposition.